


MEMORANDUM

Department of Environmental Quality
Water Division

SUBJECT: Guidance Memo No. 97- 003
Permit Fee for Conversion from No-Discharge
Certificates to VPA Permits

TO: Regional Directors

FROM: Larry G. Lawson, P.E. 

DATE: April 29, 1997

COPIES: Regional Office Permit Managers, Water Permit Managers,
Compliance and Enforcement Managers, Martin Ferguson,
Amy Clarke, OWPS Permit Staff

As you may know, the old No-Discharge Certificates (NDC) are being phased out and, when necessary, they are being replaced with Virginia Pollution Abatement (VPA) permits. According to the VPA Permit Regulation, all NDC holders are to be notified of this transition by July 1998. The regulation also states that all NDCs still in existence will be terminated in July 1999. During the course of a recent permit file audit, the OWPS audit team discovered that a Regional Office had processed a permit application for an NDC to VPA conversion as a modification rather than as an issuance. This meant that the applicant paid one half of the VPA issuance fee.

The regional office based their decision to charge the modification fee on their interpretation of the Permit Fee Regulation, specifically its definition of "new permit". According to the fee regulation, a new permit is "a permit, certificate or special exception issued by the Board to an applicant that does not currently hold and has never held a permit, certificate or special exception at that location". The Region reasoned that since the activity to be covered by the VPA permit was already subject to the requirements of the NDC, then it could not consider issuance of the VPA as the issuance of a new permit. Therefore, they decided to issue the VPA as a modification of the existing NDC and charged the applicant the modification fee.

In order to assure consistency among the regional offices in implementation of the VPA Permit Regulation and the Permit Fee Regulation, if this situation arises in your Region over the next two years I am recommending that you handle it as follows: VPA permits issued as conversions from NDCs should not be considered modifications of the NDC and the applicant should pay the full VPA permit issuance fee. In these cases the NDC is being revoked, not modified, and the VPA is being issued for the first time.

If you have any questions on the procedures presented here, please feel free to call Richard Ayers.

DISCLAIMER

This document provides guidance to permit writers. It is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of site-specific facts when permits are issued.